IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 366 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHORUKA STEEL LTD AND OTHERS
Versus
MANISH N VORA AND OTHERS

Appearance :
MR ARUN H MEHTA for the applicants.
MS ML SHAH, ADDL. PUBLIC PROSECUTOR for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/02/2006

ORAL JUDGMENT

1. By filing this application, the applicant has prayed to quash the

complaint filed by the respondents herein against the petitioners before the learned Metropolitan Magistrate, Court N.15, Ahmedabad being Criminal Case No. 1103 of 1993. The aforesaid complaint is filed by the respondent No.1 herein under section 138 of the Negotiable Instruments Act.

2. Ms. M.L. Shah, learned Additional Public Prosecutor states that a cognate matter being Misc. Criminal Application No. 365 of 1995 between the same parties involving identical facts and question was disposed of by this Court [Coram: Ravi R. Tripathi, J.] on 15th February 2006 but this matter could not be disposed of along with the aforesaid matter as the same was not listed on the Board on that date. A copy of the order is also placed before, and on perusing the same, it appears that the question involved in both the applications are identical. The relevant portion thereof reads as under:

> "2. Mr.Arun H.Mehta, the learned Senior Counsel appearing for the applicants submitted that the present case is squarely covered by a decision of this Court in other similar matters being Criminal Misc. Application Nos.3777, 3778 and 3779 of 1993 decided by this Court (Coram: K.J.Vaidya, J.) by judgment and order dated 17.12.1994. He submitted that the Magistrate has no jurisdiction to entertain the complaint filed against the present applicants and on that short ground, by following the reasonings of this Court in the aforesaid judgment and order dated 17.12.1994, the present application be allowed and the complaint be quashed.
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> 3. Mrs.Manisha L.Shah, the learned Additional Public Prosecutor relied upon a decision of the Hon'ble the Apex Court in the matter of TRISUNS CHEMICAL INDUSTRY VS. RAJESH AGARWAL AND OTHERS, reported in (1999) 8 S.C.C. 686 and submitted that the Hon'ble the Apex Court has held that, "Magistrate taking cognizance of offence need not

have territorial jurisdiction to try the case as well." She submitted that the Hon'ble the Apex Court was pleased to hold that, "any Judicial Magistrate of First Class has power to take cognizance of any offence, whether committed within his jurisdiction or not." The learned Additional Public Prosecutor further submitted that the Hon'ble the Apex Court was pleased to hold that, "quashment by High Court of complaint on the ground that Magistrate who took cognizance had no territorial jurisdiction to try that case, was improper and premature." The Hon'ble the Apex Court was further pleased to observe, "power of Judicial Magistrate of the First Class to take cognizance is not impaired by territorial restrictions."

The learned Additional Public Prosecutor invited the attention of the Court to the observations of the Hon'ble the Apex Court in paragraph Nos.13 and 14 which read as under:

> "13. The only restriction contained in Section 190 is that the power to take cognizance is "subject to the provisions of this chapter". There are 9 sections in Chapter XIV most of which contain one or other restriction imposed on the power of First Class Magistrate in taking cognizance of an offence. But none of them incorporates any curtailment on such powers in relation to territorial barrier. In the corresponding provision in the old Code of Criminal Procedure (1898) the commencing words were like these; "Except as hereinafter provided....." Those words are now replaced by "subject to the provisions of this chapter...." Therefore, when there is nothing in Chapter XIV of the Code to impair the power of a Judicial Magistrate of the First Class taking cognizance of the offence on the strength of any territorial reason it is impermissible to deprive such a Magistrate of the power to take cognizance of an offence – or course, in certain special enactments special provisions are incorporated for restricting the power of taking cognizance of offences falling under such acts. But such provisions are protected by non obstante clauses. Anyway that is a different matter.

> 14. The jurisdictional aspect becomes relevant only when the question of enquiry of trial arises. It is therefore a fallacious thinking that only a Magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post-cognizance stage and not earlier."

4. Mr.Mehta, the learned advocate for the applicants submitted that even then the present application is required to be allowed to a limited extent, viz. Magistrate may be directed to transfer the matter to an appropriate Court of a Magistrate after taking cognizance of the matter.

5. That being so, the present application is allowed to a limited extent. It is clarified that the learned Metropolitan Magistrate, Court No.15, Ahmedabad shall pass appropriate order in light of the aforesaid observations when it comes to try the aforesaid complaint filed against the present applicants. Rule is made absolute to the aforesaid extent only."

Since identical question is involved in the present application also, this application also stands disposed of in the aforesaid terms.

Rule made absolute accordingly.

[P. B. MAJMUDAR, J.]

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